

SEPARATED CHILDREN IN EUROPE PROGRAMME

COUNTRY ASSESSMENT

COUNTRY: POLAND

RESPONDENT: WARSAW UNIVERSITY LEGAL CLINIC

PERIOD COVERED: OCTOBER 2000 – FEBRUARY 2001

BASIC LEGAL ACTS REFERRED TO:

- Civil Code from 23 April 1964
- Family and Guardianship Code of 25 February 1964
- Code of Civil Procedure of 17 November 1964 (Dziennik Ustaw¹ from 1964, No 43, item 296)
- Act on Proceedings Concerning Juveniles of 26 October 1982
- Administrative Procedure Code of 14 June 1960
- Aliens' Act of 25 of June 1997 (Dziennik Ustaw from 1997, No 114, item 739)
- Act on Birth, Marriage and Death Register of 29 September 1986 (Dziennik Ustaw from 1986, No 36, item 180)
- Ordinance of the Minister of Internal Affairs and Administration on Detailed Principles, Proceedings and Specimens of Documents in Foreigners' Issues of 23 December 1997.

MOST IMPORTANT AGENCIES/INSTITUTIONS CONSULTED:

- Ministry of Internal Affairs and Administration
- Ministry of National Education
- Border Guards
- Police
- UNHCR
- Polish Humanitarian Action
- Refugee Reception Centre
- Emergency Children Care Unit

¹ The Official Journal of the Republic of Poland, hereinafter referred to as the "Dziennik Ustaw".

DEFINITION OF 'SEPARATED CHILD' (SGP A 2.1)

- a) **Please give details of the definition used in your country. Different agencies may apply different definitions. Please give details of it.**

In Poland the term 'separated child' is not widely used. The term 'separated minor in refugee procedure' is far more popular and used within the debates concerning this issue. In the legal acts, which are applicable to the legal capacity and criminal responsibility, the terms 'minor' and 'juvenile' are used. In colloquial speech, the term 'refugee children' is frequently used.

We shall, then, present the definitions provided for in the legal acts referring, firstly, to the term 'minor' as understood in different branches of law, secondly, to the term 'separated', and finally to the term 'refugee'.

1. Provisions of the Act on Private International Law.

Pursuant to the Act on Private International Law², legal capacity and capacity to perform acts in law should be assessed according to *lex patriae*. Therefore, a person who has lodged an application for refugee status, and who, pursuant to *lex patriae*, is considered as an adult, should be treated as such by the Polish authorities. However, in practice, it is the Polish law that is most frequently applied in these matters.

2. Definition of 'minor' in the Polish legal system.

Pursuant to the Civil Code³, minor is a person under 18 years of age⁴. In this point, he/she reaches full legal capacity to perform acts in law. The only exemption from this rule refers to female minors, who may attain full legal capacity after marriage if they are at least 16 and have received a permission of the Family Court to marry (Article 10 par. 2 of Civil Code and Article 10 par. 1 of Family and Guardianship Code⁵).

3. Lack of legal capacity to perform.

Pursuant to Art. 12 of the Civil Code, a minor, who is under 13, has no legal capacity to perform. Any legal action taken by such minor is null and void (Art. 14 par. 1 of the Civil Code). But if a minor under 13 enters into a contract concerning ordinary and plain matters of everyday life (e.g. buying ice cream in a pastry), such contract is valid, unless it results in a gross damage to the prejudice of the minor (Article 14 par. 2 of the Civil Code). A minor under 13 may not be held liable for any damage he has caused (Article 426 of the Civil Code).

² Article 9 of the Act on Private International Law.

³ Dziennik Ustaw 1964, No 16, item 93, with amendments.

⁴ Art. 10 par. 1 of the Civil Code.

⁵ Dziennik Ustaw from 1964, No 9, item 59, with amendments.

4. Limited legal capacity to perform acts in law.

Minors being 13 or more years old, but not reaching the age of 18, have only limited legal capacity to perform (Art. 15 of the Civil Code). They can enter into contracts concerning ordinary matters of everyday life (Art. 20 of the Civil Code). Such minors' powers are also unlimited as to the right to dispose his own salary (Art. 21 of the Civil Code). However, a legal representative (parent or guardian appointed by the Family Court) must confirm all other legal activities of minor limited in his legal capacity to act (Art. 18 par. 1 of the Civil Code).

5. Criminal responsibility.

Pursuant to the Penal Code⁶, a person under the age of 17 cannot be held responsible for having committed a prohibited act (Art. 10 par. 1 of the Penal Code). However, a juvenile who was at least 15 at the time of committing the offence, shall be held responsible in case of committing the most serious crimes, such as murder, rape, kidnapping. It may, though, happen only if the circumstances of the case and the mental state of development of the perpetrator, his characteristics and personal situation warrant it (in particular if they indicate that this person was able to understand the wrongfulness of his act), especially when previously applied educational or corrective measures have proved ineffective (Art. 10 par. 2 of the Penal Code).

A young person, who is engaged in criminal activity but cannot be held penally responsible pursuant to the Penal Code because of age or lack of maturity, may however be subject to a penalty on the basis of the Act on Proceedings Concerning Juveniles⁷. The main aim of this procedure is to process in accordance with the best interest of a juvenile and to protect him from demoralisation. The Family Court, which has the jurisdiction over this procedure, may (i) use educational means of treatment, e.g. supervision of legal representative or social organisation; (ii) oblige the juvenile to redress the damage, which was caused by his activity; (iii) attend the school; (iv) avoid the contacts with certain groups. The single punishment provided for in the cited Act, which consists in placing the juvenile in a reformatory, may be applied only if the educational means of treatment have proved to be ineffective in the process of protection the juvenile from demoralisation⁸.

6. Term 'separated' relating to a minor in Polish legal system.

The term 'separated child' in the meaning given by SGP A 2.1 does not exist in the Polish legal system but only in colloquial speech.

7. Term 'refugee'.

The term 'refugee' is used in the Polish language in two different meanings – in the legal context and in the colloquial speech.

⁶ Act of 6 June 1997, Dziennik Ustaw, 199, No 88, item 553.

⁷ Act on Proceedings Concerning Juveniles of 26th of October 1982, Dziennik Ustaw 1982, No 35, item 228, with amendments.

⁸ Act on Proceedings Concerning Juveniles.

The Polish law provides for only one 'refugee status' and, therefore, for only one 'refugee' definition, which is the definition set forth in the Geneva Convention and implemented in Poland by the Aliens' Act of 25 June 1997⁹. The Polish law does not know any humanitarian status or 'B status'. The latter shall, probably, be introduced into the Polish Aliens' Act within the reform of the alien law, expected in 2001.

The term 'refugee' is also applied to persons who have been allowed to arrive and to stay in Poland on the basis of temporary protection, decided by the Polish government, which was the case of Kosovars in the 90's.

In the colloquial speech, the term 'refugee' is also applied to persons who do not fulfill the definition of the Geneva Convention, but who have fled their countries of origin. These persons are, most frequently, economic migrants, or persons fleeing from the country of origin because of war or civil war, but who have not been touched by any individualized persecution.

In the national assessment, we shall be doing reference to the term 'separated' as it is used in the Statement. However, we shall be interchangeably using the terms 'child' and 'minor'. The term 'separated child' shall be used in the meaning given by the Statement, whereas the term 'minor' shall be used in the meaning given by the Polish Civil Code (as it has been explained in point 2 above).

b) Are children with older siblings over 18 years of age considered to be separated children?

Pursuant to the Polish law, the parents of a minor or a guardian appointed in a relevant manner, responsible for taking care of him, may be the legal representatives of the minor. The Polish law does not regard older sibling automatically as legal representative of his younger brother or sister. Nevertheless, a sibling, who is of age, may be – certainly – appointed by the Family Court as a guardian of his younger brother or sister, if this shall be in the best interest of the child¹⁰.

ACCESS TO TERRITORY

a) Please describe relevant law, policy and practice in your country?

Pursuant to the Polish Aliens' Act, a foreigner (including minors), who wants to cross the Polish border, has to possess a valid travel document, as well as a Polish visa – Art. 5 of the Aliens' Act (unless he is a citizen of a country, who has signed an agreement with the Polish government on the non-visa border crossing). Moreover, such person has to prove that owns a sufficient amount of money for the time of his presence within the territory of Poland (Art. 6 of the Aliens' Act). That obligatory sum of money differentiates with regard to the age of the foreigner crossing the border and

⁹ Dziennik Ustaw, 1997, No 114, item 739 with amendments. The Aliens' Act has been recently amended by the Act of 11 April 2001 on the Amending of the Aliens' Act and Other Acts. The newly introduced changes have come into force on 1 July 2001.

¹⁰ Argument *a contrario* resulting from Article 149 of the Family and Guardianship Code.

depends on the fact whether he is under or over 16 years of age. Lower sums are demanded from foreigners below 16 years¹¹.

Pursuant to Art. 52a, a minor alien may be deported to his/her own country of origin or to another country only in the event that care will be provided to him/her in such a country by one of the parents or other adults or by competent care institutions in accordance with the standards provided for in the Convention on children's rights. The Act further stipulates that the deportation is also not allowed if it should violate the provisions of the Convention on Protection of Human Rights and Fundamental Freedoms prepared in Rome on the day of 4 November 1950 (Art. 53). This provision may also have an impact on the situation of separated minor, especially in the context of Art. 8 of the ECHR and the right to family life as understood by the European Court of Human Rights in Strasbourg.

However, these reasons constitute only obstacles to deportation and not to return, and are applied at the issue of complex administrative proceedings. Therefore, if a person arrives at the Polish border and does not fulfil the requirements set forth in Art. 5 and 6 of the Aliens' Act, such person may be returned at the point of entry to a place where he could be exposed to a danger.

The new Art. 13 par. 3a provides that a minor alien who is not accompanied with a legal guardian may be denied entry into the territory of the Republic of Poland despite the fact he/she holds a valid travel document, means needed for the entry and residence and a visa or he/she is entitled to enter based on a treaty or agreement binding the Republic of Poland. The authorities submit that this provision is directed against persons who bring children to Poland for purposes of exploitation, including sexual one. However, this explanation seems very doubtful. The expressed aim of this provision – certainly very appreciable – could be achieved through other means, such as intensified controls at the ports of entry. Providing for such a general provision that could easily lead to the refusal of entry given to every separated child, is highly unreasonable.

The provisions cited above may very strongly affect the situation of separated children at the point of entry to Poland. The Polish Border Guards are under no obligation to inform the child on the possibility to apply for the refugee status or to verify whether a child arriving at the border fulfils the criteria described therein. But even if they do so, they must carry out interviews with the child – sometimes detailed, which is contrary to the third sentence of point C.1.1 of the SGP.

Nevertheless, it should be noted that most of the minors who are within the territory of Poland have entered the country illegally. Therefore, the provisions discussed above do not apply in these cases. If the Border Guard officers arrest a child, whose

¹¹ Ordinance of Minister of Internal Affairs and Administration of 17th of June 1998 on the Determination of Amounts of Means Necessary to Cover the Cost of Entry, Transfer, Sojourn and Departure of Foreigners Crossing the border of the Republic of Poland and Detailed Rules on Their Documentation, published in Dziennik Ustaw 1998, No 90, item 574, with amendments. .

identity cannot be stated or his parents cannot be found, they shall place such minor in a police children custody and shall initiate the deportation procedures¹².

b) To what extent does this conform to the Statement? Please outline in brief.

It should be underlined that there are no differences between the treatment of adults and children, including separated children, at the Polish borders, neither pursuant to legal acts, nor in practice. Therefore, separated children are refused entry to Poland and they are returned at the point of entry, if they do not fulfil the criteria described above.

The new amendments concerning the access to the Polish territory referring specifically to separated children seem to be deeply wrong and totally contrary with the Statement. As it has been noted above, the explanations given by the Polish authorities are not at all satisfactory and in our opinion this may lead to the situation when separated children are refused the entry not only because they are supposed to be exploited, but simply because they are separated, deprived of protection of their parents or representatives.

It happens that separated children are also detained for immigration reasons. Separated children may be subject to interviews carried out by the immigration authorities.

c) Are any changes needed? In relation to the first principle?

The best interest of the child should be the primary concern of all the authorities dealing with separated children.

For that reason, the child should never be returned or refused entry. Furthermore, separated children entering the territory of Poland should be informed in a way appropriate to their age and level of maturity on the asylum procedure and about the possibility to apply for refugee status, even if they are unable to express their needs.

The appropriate changes in the Polish legislation are needed.

d) Please also indicate whether your country has ‘carrier liability legislation’ whereby airlines, train and boat companies can be fined if they bring in someone without proper documentation. Is this applied to children and young people under the age of 18?

Pursuant to Art. 68 par. 1 of the Aliens’ Act, a carrier is obliged to ensure, without an unreasonable delay, a departure of a foreigner who, arriving by aircraft or watercraft, has been refused entry at the territory of Poland at the cost of the foreigner or, if this person does not have necessary means, at the cost of the carrier.

¹² Compare the statistics given in the Table 2 of the Appendix.

Such carrier may be subject to an administrative fiscal penalty, amounting up to 5000 zlotys, for every transported person having been refused entry to Poland (Art. 68 par. 6 of the Aliens' Act).

The law does not provide for any exceptions referring to minors. Therefore, it is assumed that this legislation applies also to the separated children.

Trafficking

- e) Are you aware of any children being trafficked for purposes of exploitation into your country? If so please give brief example(s) stating if possible the country of origin and nature of trafficking. Please give also examples where children have travelled along trafficking routes in order to apply for asylum.**

There are some reported cases of children trafficked to Poland for purposes of exploitation. It refers most frequently to children entering illegally the Polish territory, trafficked for reasons of economic exploitation. They are usually of Romanian origin. They are used to work in the streets, where they beg and steal. There have been a few cases reported of minor females used for prostitution.

- f) Have any measures been taken by the state to combat trafficking of any sort?**

More intensified controls and patrols conducted by the Police in the interior of the country and by the Border Guards at the borders have been ordered, especially with regard to the prostitution. No further details on the current state practice in the combat against trafficking are available.

IDENTIFICATION

- a) Please describe relevant law, policy and practice in your country.**

Firstly, it should be noted that, on the one hand, the child often enters the Polish territory by illegal ways and, therefore, the identification is difficult to perform.

On the other hand, even if the child enters legally to Poland, no special procedures concerning the identification of separated children are set forth at the ports of entry. When a minor enters the Polish territory together with or in a group, it is rather frequent that a minor is associated to the accompanying adults, in order to create an alleged family link. The authorities state that this practice has been undertaken in the best interest of children concerned, who could remain with the persons of the same nationality. The UNHCR Office has been notifying thereof the Ministry of Internal Affairs and Administration, which initiated the legal proceedings with regard to such cases.

Sometimes, the Polish Border Guard officers are obliged to admit the separated minors returned to Poland on the basis of readmission agreements, mostly from Germany¹³. The Polish party submits that separated children should not be returned, but the

¹³ Compare the statistics given in Table 2 of the Appendix.

German party is of the opinion that the refusal to admission would constitute a violation of the Executive Protocol to this agreement, because it does not make a difference between particular categories of persons. It happens that the German party identifies the persons concerned as adults, by submitting them to specialised medical examinations and providing them with special certificates, and transfers them to the Polish Border Guard. Even in the opinion of the Polish Border Guard this practice is very doubtful.

The Border Guard, only in 1997, refused to admit from the German party 158 foreigners. These persons were claiming to be minors and the German authorities failed to prove their age.

It should be noted that, at the end 1999, the UNHCR recommended that return from third countries to Poland should be stopped until the factual and legal situation of separated children seeking asylum had improved significantly, but the returns continue.

In the light of the new amendments concerning the access to the Polish territory (see above), in particular Art. 13 par. 3a, it seems that a separated child, in order to be refused entry, must be first identified as such and the authorities foresee introduction of a mechanism allowing their identification. Therefore, it may be easier for different organisations to have contact with these children, provided that they have not been refused entry.

b) To what extent does this conform to the Statement? Please outline in brief.

The practice described above, applied most frequently by the Border Guards, is not at all conform to the Statement. No special procedure aiming to identification of separated children are put in place at the ports of entry. The procedure set by the immigration authorities at the ports of entry seems rather to avoid the identification of children as separated minors, which is an easier solution, since it does not require the performance of the obligations set forth in the Polish law with regard to separated children. When the child is accompanied by an adult, the nature of the relationship between the child and the adult is not recognised, on the contrary - the adult is often considered as the child's representative and the child as non-separated.

Furthermore, the illegal entries do not allow setting any procedures referring to the identification at the arrival to Poland.

In both situations described above, it is difficult to share information on separated children.

c) Are there any changes needed? In relation to any first principle?

It would be purposeful to establish a procedure of examination of the nature of the relationship between the child and the accompanying adults on the case-by-case basis. It should be considered whether a special instruction for the Border Guards should be of any use in this context. Organisation working with separated children should be inform by the state authorities on cases of entry of separated children in Poland.

APPOINTMENT OF GUARDIAN OR ADVISER

a) Is a guardian or adviser appointed?

It should be emphasised at the very beginning that the Polish law does make a distinction between a guardian and a legal representative¹⁴. In the Polish legal system there is no institution of adviser as defined in SGP C 3.1 - a person trying to meet all interests (legal, material, psychological) of separated child.

b) If so, what is their role?

Pursuant to the Family and Guardianship Code, the Family Court shall appoint a guardian for a minor, if both parents of the minor are not living or both of them are deprived of their parental rights by the Family Court or they are unknown (Article 94 par. 3 of the Family and Guardianship Code). The scope of the authority of guardian is almost identical with the scope of parental rights. It should, however, be emphasised that the family law does not provide for a possibility to appoint a guardian in situations when a minor is deprived of care of his parents only because the minor and his parent are on the territories of different countries (which is the case of a separated minor).

In such situation, appointing a legal representative for a minor foreigner seems to be the only legal possibility to provide the minor with at least protection. The scope of the powers of legal representatives is smaller than those of guardian. The role of legal representative also consists in representing the minor, but only with regard to procedural and legal topics. His ability to act as the representative of minor is restrained to the procedure that he is appointed to (e.g. detention or refugee status procedure).

Pursuant to the Administrative Procedure Code¹⁵, a competent administrative authority is obliged to notify the Family Court of a need to appoint such a legal representative in case when the minor has no legal representative (Article 34 par. 1 of the Administrative Procedure Code). The legal representative can be appointed provided that the child is subject to the refugee or detention proceedings. Children present on Polish territory but not entering any legal procedure do not have legal representatives appointed.

c) How soon after arrival is they normally appointed?

An application for refugee status lodged by a separated minor may not be considered until the legal representative is appointed. Therefore, the competent authority, which is the President of the Office for Repatriation and Aliens¹⁶, shall apply to the Family Court to appoint a legal representative. The bureaucratic procedures within the Office

¹⁴ 'Legal representative' is called 'curator' in the Polish law. Knowing that this latter term has a specific meaning in English, we have decided to translate this term as 'legal representative', because we considered this term would be the most appropriate and the closest to the role of the 'curator' in the Polish legal system.

¹⁵ Dziennik Ustaw from 1980, No 9, item 26, with amendments.

¹⁶ The Office has replaced the Department of Migration and Refugees of the Ministry of Internal Affairs and Administration as from 1 July 2001 and is now the sole authority competent in the matters of aliens in Poland.

may, however, take some time. And moreover, according to the officers working in the Department, the decision of the court in this matter may not be expected usually earlier than 2 months from the date of the registration of the case.

d) What kinds of background and expertise do guardians/advisor have?

Despite the fact that the scope of prerogatives of legal representative is relatively small, it is often treated instrumentally, in order to enable to legitimise and formally continue the procedure. Since the presence of the child concerned is not required within the session of the court while appointing the legal representative, the latter may even not know the child, not to mention having any personal relationship with the child that he is supposed to take care of and to represent. According to the information gained by the UNHCR¹⁷ at the Guardianship Court in Pruszków, that has had until recently the jurisdiction over the children gathered in Central Reception Facility in Dębak, most of legal representatives appointed by this court have recruited from judicial clerks working in the Family Court. Since performing the function of legal representative is remunerated, it simply constitutes another source of income for the members of the administrative staff at the Family Court.

It should be noted that - in the same time - such minor is assisted permanently in the Central Reception Facility by the social workers, which know the child and have rather good personal contact with him.

It should be emphasised that the Warsaw University Legal Clinic, aware of the lamentable situation with regard to the quality of the legal representation of separated children, has started to assume the responsibilities of legal representatives within the proceedings of determination of the refugee status. We apply to the Refugee Department of the Ministry of Internal Affairs and Administration to propose - while submitting a relevant motion to the Family Courts - students working in the refugee section of the Legal Clinic as possible candidates for legal representatives. Since it is not an established practice, this solution works only in particular cases.

e) To what extent does this conform to the Statement? Please outline in brief?

The Polish law referring to point C.3 of the Statement seems to be to totally contrary to the Statement.

Firstly, the notion of the guardian as provided for in the Statement does not conform to the terms of the Polish law. A guardian referred to in the Statement corresponds with the term of the 'guardian' in the Polish law, which is, however, not applicable to the separated minor, at least not when the minor has just arrived to Poland and initiates the procedure of determination of the refugee status. .

Secondly, appointing a legal representative seems to be the only way to assure the minimum of protection to the child. However, the tasks of legal representative, as provided for in the Polish law, are limited to particular actions, undertaken most frequently within the administrative proceedings of determination of refugee status. A legal representative does not have a legal obligation to act in the best interest of the

¹⁷ Unaccompanied Minor Asylum Seekers - Alien Children in Poland

child. He acts, unlike the guardian, in the general interest of the administration of justice. His protection is, therefore, temporary and finishes when the action that the legal representative has been appointed for is accomplished.

Thirdly, the legal representative set forth in the Polish law corresponds only with the third phrase of point C.3.1. Pursuant to the Polish law, all other tasks enumerated in point 3.1 of the SGP may be undertaken only by a guardian. The latter may be appointed with regard to an separated child only if the parents of the minor are dead, their identity is unknown or their parental powers have been suspended by the Family Court. The last possibility is the most frequently used in case of separated children in Poland. It requires, however, the institution of two separate judicial proceedings (first to suspend the parental powers, then, to establish the guardianship and appoint a guardian) and it is time-consuming. And it may be done only when the status of the child in Poland is determined and the child is allowed to stay in Poland (e.g. when the child has been granted the refugee status).

Fourthly, since the philosophy of guardianship provided for in the SGP and in the Polish law with regard to separated minors is totally different, it is unrealistic to speak about the time limits for the appointment of a guardian (point C.3.2 of the SGP) or about the background of persons appointed as guardians (point C.3.3 of the SGP). Nevertheless, it seems that even though the Polish law establishes the possibility to appoint only a legal representative to an separated child, the practice should assure the best realisation of the limited legal possibilities to provide a child with the legal and factual assistance. And - as it has been presented above, the practice shows that the court seem to consider the legal representative as another formal requirement necessary to carry out the proceedings and to forget about the best interests of the child.

f) Are any changes needed?

The relevant provisions referring to the guardian appointed as soon as the separated child arrives to Poland should be introduced into the Polish law. The legal representative should be then considered only as a representative of a child within the judicial or administrative proceedings, as it is set forth in third phrase of point C.3.1.

The introduction of the guardian into the Polish legal system – as set forth in the Statement of Good Practice - would however require amending the whole Polish guardianship law and might be difficult to perform. Maybe the similar amendments might be implemented by a way of regulation referring only to separated children, having a character of *lex specialis* with regard to the provisions in force.

REGISTRATION AND DOCUMENTATION

a) Please describe relevant law, policy and practice in your country?

There is no special register for records on separated minors. If a minor arrives legally to Poland, he is registered at the ports of entry by the Border Guards, which carry out an interview with the child. If the child is identify as separated one (see above in point

2), such child should be transferred to the children care units (if the child is below 13 years of age) or to the centre for persons applying for refugee status (if he is above 13).

According to the Ordinance of the Minister of Internal Affairs and Administration on Detailed Principles, Proceedings and Specimens of Documents in Foreigners Issues¹⁸, the Minister is obliged to run a register containing data of all foreigners (including minors) applying for refugee status. Pursuant to Art. 66 of the Aliens' Act, the data of persons who have been granted the refugee status, or who are in the procedure, are protected on the basis of special provisions, but in any case the data cannot be disclosed to the authorities of the country of origin of a person concerned without this person's previous written consent. The Act on Protection of Personal Data¹⁹ constitutes the basis of protection of data regarding the refugees and asylum seekers, including – certainly – the separated minors.

If a child has entered Poland illegally, and the first contact with the child has been within the Polish territory with other authorities than the Border Guards, such as the Police, the child shall be registered by this authority and transferred to the Police child care unit, where the decisions on the child's destiny shall be subsequently taken.

The child is documented by the relevant authorities.

b) To what extent does this conform to the Statement? Please outline in brief?

It is unrealistic to expect that (i) the Police or the Border Guards shall limit the interviews they carry out to gathering the basic information about the child, since they are responsible for determination whether the child is really separated and where the child should be placed, (ii) the interviews shall be carried out by persons with appropriate training or expertise, because there are no such persons or there are very few of them within the relevant forces, (iii) a "twin-track" interview shall be performed after the guardian is appointed, since no guardian shall be appointed until the destiny and the status of the child within the territory of Poland is decided (see point 3), (iv) a complete history of the child shall be taken by 'an organisation with care duties towards the child', because this shall be done by an employee of the Office for Repatriation and Aliens (see more in point 11).

c) Are any changes needed?

The interviews with the separated children carried out by the officers of the Border Guards or the Police should be adjusted to the needs and vulnerability of the child, possibly even carried out by persons having a special training in this matter.

One common register of data on separated children should be created. It would make the registration process and the identification of the child and, then, the proceedings in the child's case easier. To have more details, see point 13 (Data Collection).

AGE ASSESSMENT

¹⁸ Dziennik Ustaw from 1998 No 1, item 1

¹⁹ Act of 27 August 1997.

a) Please describe relevant law, policy and practice in your country?

Until recently, the Polish authorities have not been using such procedures as dental or wrist bone x - rays to estimate age. Officials rarely gave the benefit of doubt in age assessing process. Due to this fact minors have been often detained or threatened with detention²⁰.

However, the authorities have lately started to use these procedures. Until recently, they have been using Art. 38 par. 1 of the Aliens' Act, pursuant to which a foreigner who has filed an application for refugee status is obliged to submit to actions aiming to his identification or stating his identity, consisting, in particular, in taking his fingerprints and photographs. In justified cases, a foreigner shall be obliged to submit to medical examination, taking his blood and excretory samples (Art. 38 par. 1 p. 2 of the Aliens' Act). On the basis of this Article, the authorities perform examination aiming to assess the age of young persons who could be minors. The UNHCR Office considers that the age assessment may not be conducted on the basis of the cited provisions of law.

It should be emphasised that, pursuant to Paragraph 3 of this Article, if a foreigner refuses to submit to actions referred to in point 1, his application for refugee status shall be left unheard, and if this person refuses to submit to actions referred to in point 2, this person shall not be put in a centre for asylum seekers. Therefore, a child might have been forced to submit such examination, threaten by the loss of place to stay.

The amendments of the Aliens' Act that came into force on 1 July 2001, provide – for the first time in the Polish law – for the regulation of age assessment procedures. Pursuant to newly introduced Art. 34a par. 3 of the cited Act if the declared age of an alien claiming to be a minor rises serious doubts, a medical examination may be carried out upon the consent of the alien or the legal guardian appointed to represent that alien for the purpose of establishing the actual age of the alien. The results of the medical examination in addition to specifying the age of the alien shall also specify the acceptable limits for an error. Paragraph 4 of this Article stipulates that the alien previously referred to shall be treated as a person of full legal age (an adult) if he/she or the alien's legal representative denied the permission for the alien to undergo medical examinations aimed at establishing his/her age. This provision is very important, however not fully satisfactory, since – because of the contents of Par. 4 – the foreigner may be sometimes forced to submit himself to such examination. Therefore, the benefit of the doubt may not be always given to the person concerned. It should be mentioned that the UNHCR Bureau is very contented with the margin of appreciation being *expressis verbis* provided for in the Act.

The UNHCR has – in general - a sceptical opinion on the scientific methods of the age assessment. It should be noted that some states do not apply these methods because they consider that the margin of interpretation is too wide to rely on them.

The age assessment is carried out usually by the special medical units of the Border Guards.

²⁰ Unaccompanied Minor Asylum Seekers - Alien Children in Poland

b) To what extent does this conform to the Statement? Please outline in brief?

Firstly, the benefit of the doubt is not given to the young persons.

Secondly, the age assessment is conducted by an entity that may not seem to be fully impartial and independent.

Thirdly, sometimes the age assessment may be seemed as forced, especially in the context of the provisions of law cited above.

c) Are any changes needed?

The age assessment system should be changed in a manner that the age assessment procedure should be applied more frequently. On the other hand, the authorities must also bear in mind that these procedures are not the exact science.

The benefit of the doubt should always be given to the young persons who could be minors.

DETENTION

a) Please describe relevant law, policy and practice in your country?

In the beginning, it should be noted that there are two distinct categories of centres where separated children may be put in, depending, basically, on the manner they have crossed the Polish border.

Firstly, if a separated child enters the Polish territory legally and lodges an application for refugee status, the Family Court shall be informed thereof by the Office for Repatriation and Aliens in order to appoint legal representative and decide about placing the child in relevant institution (Par. 43 p. 2 of the Ordinance on Detailed Principles, Proceedings and Specimens of Documents in Foreigners Issues²¹).

The relevant institutions referred to in the Paragraph cited above are either an education and care centre, if a child is under 13 years of age, or a reception centre for persons applying for refugee status, if a child is over that age. Usually, a child under 13 is placed in a children care unit and a child over 13 is placed in the Central Refugee Reception Centre.

If the child has entered Poland illegally and has been arrested by the Border Guard or by the Police and is waiting for the deportation, such child may be placed in an emergency care institution. If it is a young person between 13 and 17, such person may be placed in a Police Children Custody, for a period of time not exceeding 48 hours. The Family Court may prolong it for the time not exceeding 14 days. Finally, if it is a young person who is more than 17 but still not 18, such person may be held penally responsible on the general basis, like an adult. Therefore, such person shall be given over to the disposal of the common court and placed in a deportation facility. The deportation facility, referred to, is a detention centre of closed character, where

²¹ Dziennik Ustaw from 1998, No 1, item 1.

persons, in relation to which the decisions on deportation have been issued, are waiting to be deported.

It should be noted that pursuant to the Polish law, an emergency care institution is a place where a child may be placed by the Police, Border Guards and emergency health care units, as well as by the court. The minor's sojourn in such a unit should not exceed 6 months (in exceptional cases). However, because of long lasting procedures, in practice children are compelled to stay in these units for much longer.

We would like to emphasise that none of these entities is adjusted to the needs of the separated children. Their legal tasks are to provide shelter to Polish children who are in difficult family situation (emergency care institutions) and to assure a temporary residence for young delinquents waiting for a transfer to a proper correction institution (Police Children Custody). Such units do not have very strict isolatory character, so quite often foreigner minors as well as Polish children escape. The number of successful escapes from Warsaw Emergency Children Care Unit is the following²²:

Year	1992	1993	1994	1995	1996	1997	I-IV 1998
Escapes	1	6	22	40	94	135	11

As it has been mentioned above, a child over 13 is placed in the Central Refugee Reception Centre in Dębak. It is a state shelter for asylum seekers. Foreigners living in the Reception Centre are allowed to leave the Centre for not more than 72 hours, after having received a written permission issued by an authorised official. A minor asylum seeker is allowed to leave the Centre only if accompanied and surveyed by an adult asylum seeker, responsible for the child for the time of the trip outside the Centre.

Number of separated minors in the Central Refugee Reception Centre in Dębak²³:

May 1998	June 1998	July 1998	Aug. 1998	Sept. 1998	Oct 1998	Nov. 1998	Dec. 1998	Jan. 1999	Feb. 1999	Mar. 1999	Apr. 1999
8	4	8	5	10	17	10	8	1	7	7	5

Besides, during routine missions of the UNHCR officials to deportation facilities the cases of separated minors were discovered. As it has been mentioned above, some separated minors travelling in larger group of people of the same nationality are referred by the Border Guard as accompanied by creating fiction that people travelling with them are their adult representatives and, for this reason, they may be put in

²² Compare: *Unaccompanied Minor Asylum Seekers - Alien Children in Poland*, facsimile.

²³ Compare: *Unaccompanied Minor Asylum Seekers - Alien Children in Poland*, facsimile.

detention with the whole group. Moreover, sometimes a young person is considered as adult. For example, some readmitted minors, returned to Poland on the basis of readmission agreements and identified as adults by foreign forces, are treated as such also by the Polish authorities (even though reluctant to such returns and suspicious as to the age assessment).

a) To what extent does this conform to the Statement? Please outline in brief?

Pursuant to the SGP, a child should never be detained for reasons related to his immigration status.

In Poland, separated children are detained in deportation centres. And even if they are placed elsewhere, that is – practically speaking – always a place, which is close to a detention centre.

b) Are any changes needed?

Special centres for separated children – not having an isolatory character - should be created. Since for the financial reasons it may be difficult to establish such entities independently, the proposition of the pro-children-rights lobby in Parliament raised in 1997 – to create a facility for separated children within the Central Reception Centre in Dębak - should be taken into account.

The personnel working in such centres should be specially trained.

RIGHT TO PARTICIPATE

a) Please describe relevant law, policy and practice in your country?

The Polish Aliens' Act does not provide for any special provisions assuring the right to participate to the separated children and young persons. Thus, a child concerned shall have the opportunity to express his views only when lodging the application for the refugee status and within the proceedings of the determination of the refugee status in his case, for example within the status interview, carried out in the Office for Repatriation and Aliens.

It should be noted that the proceedings of the determination of the refugee status are of administrative character and the provisions of the Administrative Procedure Code shall apply accordingly (Art. 76 par. 1 of the Aliens' Act). Pursuant to Art. 10 of the Administrative Procedure Code, the state administration authorities are obliged to ensure the active participation of the parties at all stages of the proceedings and, before the decision is taken, to allow them to express their opinions on the gathered evidence and materials. Furthermore, the state administration authorities are obliged to inform the parties in an appropriate and exhaustive manner on the factual and legal circumstances that may affect the establishment of their obligations and rights. The authorities shall assure that the parties are not injured by the ignorance of legal provisions (Art. 9 of the Administrative Procedure Code).

Therefore, within the procedure of determination of the refugee status, the separated child should always be given the opportunity to speak and to be heard. Since this rights results also from the Convention on the Rights of the Child, ratified by Poland and applicable in the Polish legal system, it may be evoked within the proceedings before the Polish authorities.

b) To what extent does this conform to the Statement? Please outline in brief?

It seems that even though the Aliens' Act does not set forth any particular provisions referring to the right of the child to participate, the general principles of the Administrative Procedure Code, applicable within the refugee status determination proceedings, should be sufficient, provided that the views and opinions of the child are really taken into account. The particular attention should, however, be attached to the fact that the interviewing employees of the Refugee Department should have a special training and expertise with regard to the children interviews.

c) Are any changes needed?

The guardian of the child should be appointed (see more in point 3) and heard. Until the guardians are appointed, the legal representatives should take an active part in the interviews with the minors and should assure that the minor's best interest is secured.

FAMILY TRACING AND CONTACT

a) Please describe relevant law, policy and practice in your country?

The Polish law does not set forth any special provisions referring to the family tracing of an separated minor. Therefore, the family tracing shall be performed on the case-to-case basis, by the authorities that have a contact with the child. Often, it would be the child himself who would give the first basic information on the members of the family and their place of residence. The Polish diplomatic offices may trace these persons.

Some successful family tracing cases took place thanks to the assistance of Refugee Department (this applies to the members of family residing in the EU member countries), juvenile care centre officials and NGOs²⁴. It should, however, be mentioned, that the UNHCR is aware of cases where - even though a child's family has been traced - the EU countries were reluctant towards the reunification with parents, who have not been 'full rights refugees' in the respective country.

The question of establishment of a register of separated minors as a useful instrument in family tracing was raised within the parliamentary discussions in 1997. Unfortunately, these proposals were not adopted into 1997 Aliens' Act.

b) To what extent does this conform to the Statement? Please outline in brief?

²⁴ Compare: *Unaccompanied Minor Asylum Seekers - Alien Children in Poland*, facsimile.

Firstly, the family tracing is not always undertaken ‘as soon as possible’, but only after some time that the minor is in Poland. Secondly, it seems that the process of family tracing should be treated more seriously by all authorities and institutions involved and not neglected, as it seems to be now.

c) Are any changes needed?

The establishment of the appropriate register on separated children and their relatives should be considered.

The international institutions should be consulted more often.

Besides, it should be considered whether it might be purposeful to adopt a regulation (an instruction) on the rules referring to the family tracing.

The proper government authorities should give greater priority to the topic of family tracing ensuring that an infrastructure is in place which would ensure an effective and speedy family tracing procedure.

FAMILY REUNIFICATION IN EUROPEAN COUNTRY

a) Please describe relevant law, policy and practice in your country?

b) To what extent does this conform to the Statement? Please outline in brief?

There are no legal provisions referring to this issue in the Polish law. All the information given in point 8 apply also to the family reunification in European country. As it has been mentioned above, there have been few cases of reunification of recognised minor refugees with their parents in the EU countries²⁵, but performed on the basis of co-operation between the relevant Polish and international authorities. Within the process of accession of Poland to the EU, Poland shall be obliged to implement the Dublin Convention, offering a legal framework to the family reunification in European countries.

c) Are any changes needed?

The co-operation between the relevant Polish and international authorities does not seem to be sufficient in this matter. Polish authorities should encouraged the positive co-operation with other countries in this matter.

INTERIM CARE - HEALTH – EDUCATION AND TRAINING

²⁵ Compare: *Unaccompanied Minor Asylum Seekers - Alien Children in Poland*, facsimile.

Interim Care

a) Please describe relevant law, policy and practice in your country?

Pursuant to Art. 40 par. 1 of the Aliens' Act, the foreigner who has lodged an application for refugee status may be granted the benefits in form of: (i) lodgement, (ii) nourishment, (iii) material assistance, (iv) permanent or single financial assistance. The particular provisions referring to the rules of granting this assistance are set forth in the Regulation of the Minister of Internal Affairs and Administration on the Amount, Procedure and Detailed Rules of Granting and Suspending the Benefits for Foreigners Applying for the Refugee Status²⁶.

Pursuant to Par. 2 p. 1 of this Regulation, these benefits shall be granted to a foreigner who proves that he is unable to maintain himself within the territory of Poland for the time of the proceedings in his case. A separated minor should always be granted these benefits.

As to the lodgement, the age of the separated minor shall be decisive as to the type of the care placement where the minor should be placed. As it has been discussed above, separated children may be placed in the Central Refugee Reception Centre in Dębak, if they are more than 13 years of age. If they are younger than 13, they are to be placed in the care and education centres (most often in the Warsaw Emergency Children Care Unit). Minors are – certainly – nourished and clothed in these centres. Siblings are kept together.

The minors are permanently assisted by the social workers. In the Central Refugee Reception Centre in Dębak, the cultural needs as to the food are met, whereas in the Emergency Children Care Unit it is sometimes difficult due to the financial reasons.

It should be emphasised that different provisions shall apply to the separated minors granted the refugee status. In this case, the benefits described above may be extended to 3 months after the decision granting the refugee status is taken (Par. 2 p. 2 of the Regulation of the Minister of Internal Affairs and Administration on the Amount, Procedure and Detailed Rules of Granting and Suspending the Benefits for Foreigners Applying for the Refugee Status). After this date, the refugee, including the minor, may only be granted assistance on the basis of a newly adopted integration regulation (Regulation of the Minister of Labour and Welfare on the Detailed Rules of Granting Assistance to the Refugees, Amount of the Financial Benefits, Forms and Scope of Assistance, Procedure in These Cases and Conditions of Suspension or Refusal of the Assistance of 1 December 2000²⁷). It should be noted that the provisions set forth in this ordinance are not satisfactory with regard to the separated minors. In practice, a separated minor recognised as refugee shall be in the same position as before the decision in his case is taken. Such minor shall have to stay in the emergency care unit or in educational care centres.

The new Aliens' Act provides for a competence to issue an ordinance specifically concerning separated children. Pursuant to Art. 85g par. 1 the minister competent with respect to internal affairs, acting in consultation with the minister competent with

²⁶ Regulation issued on 6 April 1998, published in Dziennik Ustaw 1998, No 50, item 316.

²⁷ Published in Dziennik Ustaw, 2000, No 109, item 1160.

respect to social security, shall specify, by way of an ordinance, the conditions of accommodation of unaccompanied minor aliens during the proceedings for granting the refugee status, qualifications of the personnel executing such proceedings with respect to unaccompanied minor aliens and providing them with benefits concerning the interim care, health and material assistance, the conditions in which administrative actions related to the proceedings for granting the refugee status with participation of unaccompanied minor aliens shall be taken, and the manners of examining the circumstances referred to in Art. 52a, bearing in mind the interest of the child and the need to provide unaccompanied minor aliens with appropriate conditions corresponding to the level of their psychophysical development.

b) To what extent does this conform to the Statement? Please outline in brief?

The interim care solutions should be adjusted to the age and possible psychological traumas and experiences that the minors might have survived. It is impossible to believe that a social worker in the Refugee Reception Centre that has at least a hundred of asylum seekers under his protection shall be able to meet the needs of each separated minor. The same refers to the pedagogues working in the emergency children care units. It is also difficult to meet the cultural and religious needs of the minors.

c) Are any changes needed?

A greater importance should be attached to the principle of bi-culturalism. It should also be considered whether special centres (or at least special facilities within existing centres) for minors in the refugee procedure should be created, in order to take care of the special needs of the separated children.

The special ordinance referring to separated minors should be rapidly adopted.

Health

a) Please describe relevant law, policy and practice in your country?

Pursuant to Art. 40 par. 1 of the Aliens' Act, the foreigner who has lodged an application for refugee status may be granted the benefits in form of medical care.

The separated minors staying both in the Central Refugee Reception Centre in Dębak, and in the children emergency care units have access to medical service. The medical care that is provided to the minors covers all the necessary medical assistance in the emergency cases, as well as permanent medical assistance on the on-going basis. The care covers also the medicaments.

Pursuant to newly introduced Art. 2b of the Act on Social Welfare²⁸, the right to social welfare shall apply to the persons who have been recognised as refugees in Poland. Art. 24a of the cited Act provides for that refugees may be granted the assistance aiming to support their integration in Poland. The application of these provisions, however, may be difficult with regard to separated minors.

²⁸ Act of 29 September 1990, published in Dziennik Ustaw 1998, No 64, item 414, amended in 2000, the amendments came into force on 1 February 2001.

b) To what extent does this conform to the Statement? Please outline in brief?

As it has been mentioned above, a social worker that has at least a hundred of asylum seekers (adults and minors) under his protection cannot meet the needs of each separated minor. Therefore, in these conditions any ‘counselling’ referred to in the Statement is only theoretical.

c) Are any changes needed?

A greater importance should be attached to the principle of bi-culturalism. Special procedures and facilities should be created in order to meet the specific needs of the separated minors. Psychological, as well as social forms of health care should be provided to separated children, especially with regard to their vulnerability.

Education, Language and Training

a) Please describe relevant law, policy and practice in your country?

Theoretically, persons (including separated children), who are not Polish citizens have access to free elementary education (Art. 94a of the Act on the Educational System²⁹). This refers also to the refugee procedure (Par. 19 p. 2 of the Ordinance of the Minister of Internal Affairs and Administration on Detailed Principles, Proceedings and Specimens of Documents in Foreigners’ Issues). Secondary education has to be paid for but foreigners can apply for reduction or even exemption from fees. After the UNHCR comments have been taken into consideration, the secondary education is free only to persons who have been granted the refugee status (Art. 94a par. 2 of the cited Act).

In practice, children in most of the refugee centres can attend local schools. Unfortunately, sometimes, due to administrative and financial problems not all children were enrolled. For example, the local authorities in Łuków, where one of the refugee reception centres is situated, have questioned the right to free primary education. They have demanded the Reception Centre to pay the enrolment fee prior to admit the child to the primary school. Also, according to the information received from Dębak Reception Centre, the separated minors can attend Polish language classes but they do not attend local school.

Pursuant to Par. 19 p. 4 of the cited Ordinance, the foreigners staying in the refugee centres should be able to attend, if possible, the professional training courses, which are never organised due to financial shortcuts.

b) To what extent does this conform to the Statement? Please outline in brief?

The Polish classes should be accessible to separated minors and they should be encouraged to attend them.

The children concerned should attend schools on the regular basis and should be encouraged by the social workers to do so. The secondary education practically is inaccessible to minors without financial resources and strong will.

²⁹ Act of 7 September 1991, published in Dziennik Ustaw, 1996, No 67, item 329, amended in 2000, the amendments came into force on 1 February 2001.

The mother tongue teaching (that should be provided pursuant to the Statement) is not assured, due to financial and practical difficulties.

c) Are any changes needed?

The free primary education does not seem to be satisfactory to the separated children, who are not recognised as refugees. Therefore, also the secondary education should be free to the separated minors within the procedure of determination of the refugee status as it is to nationals.

Courses of Polish, mother tongue languages, as well as professional trainings should be organised for separated minors.

REFUGEE DETERMINATION PROCESS

Access to the procedure

a) Please describe relevant law, policy and practice in your country?

The applications for the refugee status shall be hereinafter recognised by the new created Office for Repatriation and Aliens. Pursuant to Art. 37 of the cited Act, an alien having no right to enter the territory of the Republic of Poland shall lodge the application for the refugee status at the border control upon entering the territory of the Republic of Poland and if this alien has arrived in the territory of the Republic of Poland illegally, he shall lodge the application immediately after crossing the border. The proceedings to grant the refugee status can be initiated only upon an application filled personally by a foreigner – the Aliens Act does not allow a representative to file the request (Art. 34 par. 1 of the Aliens' Act), which constitutes an exception from the general rule set forth in the Administrative Procedure Code. In order to make procedure as transparent as possible, the Polish authorities translated the refugee application forms into 27 languages.

The separated minor is allowed to lodge the application by himself. In principle, the child is not denied access to the procedure. However, the initiation of the proceedings shall be denied if the application has been submitted by an alien who arrived in the territory of Republic of Poland from a safe third country to which he/she has the right to return to, or if this persons applies again for the refugee status in the territory of the Republic of Poland without presenting any new material circumstances relating to that matter (Art. 35 par. 2 of the Aliens' Act).

It should be emphasised that, since the situation of the separated minors in Poland and the treatment of separated minors, both pursuant to the Polish law and in the light of the practice are not satisfactory from the point of view of the international instruments, at the end 1999, the UNHCR recommended that return from third countries to Poland should be stopped until the factual and legal situation of separated children seeking asylum has improved significantly.

b) To what extent does this conform to the Statement? Please outline in brief?

In principle, the provisions of the Polish law and the practice of their application are consistent with the SGP. Nevertheless, there may be some practical (technical) difficulties with the factual submission of the application, because some asylum seekers are sometimes not allowed by the others to enter the office and to physically submit the motion.

c) Are any changes needed?

The Polish law should be amended in a way to clearly exempt separated children from the provisions referring to a third safe country or a safe country of origin that may make difficult the process of application for asylum.

Legal representation

a) Please describe relevant law, policy and practice in your country?

Separated child asylum seekers fall within the legislation relating to children in Poland and are to be provided a legal representative during the refugee status determination procedure. As it has been mentioned above, Art. 34 par. 1 of the Administrative Procedure Code stipulates that the administrative authority is obliged to inform the competent Family Court about persons who do not enjoy full legal capacity and are not represented by an appropriate legal representative.

Also pursuant to Par. 43 p. 1 of the Ordinance of the Minister of Internal Affairs and Administration on Detailed Principles, Proceedings and Specimens of Documents in Foreigners' Issues, the authority competent to recognise the application for refugee status is obliged to submit a request to the court to appoint a legal representative to an separated minor within the proceedings for the determination of the refugee status. See more on this in point 3.

b) To what extent does this conform to the Statement? Please outline in brief?

The procedure of appointing a legal representative who is a legal representative is totally consistent with the Statement.

It should be noted that even though the legal provisions seem to fulfil the requirements of the Statement, the legal representatives appointed by the Family Court are, however, very seldom competent. See more in point 3.

c) Are any changes needed?

The legal representative should not be treated as a simple formality.

The persons appointed as legal representatives should be aware of the needs of the child, specific forms of persecution, children vulnerability, etc.

Minimal Procedural Guarantees

a) Please describe relevant law, policy and practice in your country?

According to Article 85b of the Aliens' Act, it is the President of the Office for Repatriation and Aliens who decides on granting or the refugee status. All decisions are under the sole responsibility of the President. There is no special procedure for minors refugees in Poland.

If the first instance decision is negative, an asylum seeker, including the separated minor, through his representative – legal representative, may file an appeal within 14 days to the Refugee Council, which is a special administrative body competent to recognise the appeals from the decisions taken by the (Art. 69 of the Aliens' Act).

Judicial control of decisions taken by the Refugee Board is carried out by the High Administrative Court (*Naczelny Sąd Administracyjny*). The Court decides on the legality of decisions taken by the Refugee Council. The Court has also the jurisdiction over the complaints against the passivity of the administration authorities.

The Aliens Act provides a time limit of 6 months for the President of the Office for Repatriation and Aliens to give the decision on the determination of the refugee status, This limit is practically never observed by the authorities.

b) To what extent does this conform to the Statement? Please outline in brief?

The decisions in cases of the separated minors are taken by a competent authority. The children may appeal from the negative decisions, but they are obliged to preserve the prescribed deadlines.

It should, however, be noted that the applications lodged by separated minors are never identified as such and there is no “prioritisation” within their recognition.

c) Are any changes needed?

The Polish law sets forth rather strict provisions referring to the non-observance of deadlines prescribed by asylum seekers filing appeals, etc. It does not, however, provide for the consequences in case of the transgression of the deadline of 36months for the authorities of the first instance to decide on the application for refugee status. Such consequences should be explicitly formulated by law, especially with regard to the fact that an average time for the recognition of a case in the first instance amounts from several months up to several years.

The applications filed by the separated minors should be identified and treated in a better (in particular more rapid) manner.

Independent Assessment

a) Please describe relevant law, policy and practice in your country?

There are no legal regulations on that issue in the Polish law. It is an officer of the Office for Repatriation and Aliens, who shall decide on the application lodged by the separated minor and, therefore, on the existence and ability of the child to articulate a well-founded fear of persecution.

b) To what extent does this conform to the Statement? Please outline in brief?

Since the Polish law does not set forth any special legal provisions in this matter, it seems not to be consistent with the Statement.

c) Are any changes needed?

Relevant provisions should be introduced to the Polish law.

Interviews

a) Please describe relevant law, policy and practice in your country?

Interviews with separated children are conducted in an ordinary way, by officers of the Office for Repatriation and Aliens. There is no difference between an “adult interview” and “minor interview”.

Some of the decision-makers are trained for special requirements of interviews with minors but only in a limited extent. They seem to put more importance than before to this problem.

It should, however, be noted that there are no special legal regulations in Polish law on that issue.

A legal representative of the minor is – certainly – allowed to take part in the interview, but not another person.

b) To what extent does this conform to the Statement? Please outline in brief?

The above remarks allow to state that the Polish law and practice do not conform to the SGP. Nevertheless, the situation should improve in time, since more practical trainings and workshops are organised for the employees of the competent authorities.

c) Are any changes needed?

Special requirements referring to the interviews with children should be gathered and made public and binding, if possible in a way of a special instruction issued e.g. by the Minister of Internal Affairs and Administration to whom the Office for Repatriation and Aliens is submitted

Criteria for making a decision on child’s application

a) Please describe relevant law, policy and practice in your country?

The Polish law does not provide for any special legal provisions with regard to this issue.

As we said before, at the end of 1999, the UNHCR recommended that - in view of problems in the treatment of separated minors - return from third countries to Poland should be stopped until the factual and legal situation of separated children seeking asylum had improved significantly.

b) To what extent does this conform to the Statement? Please outline in brief?

It seems that very few of the requirements set forth in point C.11.6 of the Statement of Good Practice are fulfilled by the Polish law and, as far as we know, in the every day practice of the Polish decision-making authorities, except for the child’s age and the regarding the likelihood that the child has a limited knowledge of the conditions in his country of origin. Thus, the situation with regard to the criteria for making decisions on child’s application in Poland is not consistent with the SGP.

c) Are any changes needed?

The criteria for making decisions on child's application should be put at least in a form of recommendations, issued by the competent Minister, or – if possible – in form of a legally binding regulation.

Minors who become adults during the asylum process

a) Please describe relevant law, policy and practice in your country?

The Polish law does not set forth any special legal regulations on that issue. In practice, however, it seems that the authorities welcome with relief the minor who becomes adult in the course of the proceedings.

b) To what extent does this conform to the Statement? Please outline in brief?

Since no provisions are provided, it is unrealistic to speak about any conformity with the SGP.

c) Are any changes needed?

The proceedings for determination of the refugee status should be terminated in the prescribed time limit of 3 months, in order to avoid the unnecessary prolongation of the procedure.

DURABLE SOLUTIONS

Remaining in a Host Country or Country of Asylum

Grounds for a child remaining in a host country

a) Please describe relevant law, policy and practice in your country?

In Poland separated children may be allowed to stay in the country for the following reasons:

- He/she is granted refugee status,
- He/she is granted political asylum,
- He/she is waiting for final decision for refugee status,
- He/she is granted temporary residence card or permanent residence card.

The refugee status is the status granted on the basis of the 1951 Convention, whereas the political asylum is the right to stay in Poland on the basis of the political discretionary decision issued by the Polish authorities.

The amendments to the Aliens' Act provide for the first time in the Polish law for the humanitarian status that enables children to stay in a country for example due to an

armed conflict in his/her country. Pursuant to Art. 17 par. 2 p. 7) persons who cannot be expelled from Poland in connection with the expulsion ban or inability to enforce deportation decision for reasons beyond control of the agency or of the person concerned may be granted a temporary residence card.

This opportunity may apply to a separated minor who turns out to be indeportable, for technical or legal reasons. Technical reasons may be e.g. the lack of means (financial or transportation). The inability to find the parents or relatives of the minor in order to assure the proper protection in the country of return is a legal reason to allow the child to stay in Poland.

As it has been mentioned above, pursuant to Art. 53 of the Aliens' Act, a foreigner (including a minor) may not be returned to a country where he could be subject to persecution for reasons of race, religion, nationality, belonging to a social group or political opinions, or where he could be subject to torture, a inhuman or degrading treatment or where he could be punished in such manner. Therefore, a stay of a minor who cannot be deported to his country of origin for one of these reasons, shall be tolerated by the Polish authorities within the territory of Poland and then may be granted a temporary residence card on the basis of Art. 17 par. 2 p. 7 cited above.

Granting a residence permit requires a legal entry, as well as the fulfilment of some special conditions, and therefore it is a rare solution to the separated minors.

b) To what extent does this conform to the Statement? Please outline in brief?

The Polish law is conform to the Statement, except for the last phrase of point C.12.1.1 – a minor cannot stay in Poland just because it is in the child's best interest.

c) Are any changes needed?

The Polish law should provide for a more stable legal solution allowing children to stay in Poland. The legal limbo in which the separated children may be put, created on one hand by the deportation provisions and on the other by the lack of relevant provisions referring to their status, should be abolished. The humanitarian status, enabling to legalise the stay of these persons within the territory of Republic of Poland, is foreseen in the draft amending the Aliens' Act.

The child's best interest should be always taken into account when deciding on the child's deportation. If possible, this principle should be introduced into the Polish law as one of the grounds, on which a person may obtain a residence permit.

Family reunification

a) Please describe relevant law, policy and practice in your country?

Pursuant to Par. 45 of the Ordinance of the Minister of Internal Affairs and Administration on Detailed Principles, Proceedings and Specimens of Documents in Foreigners' Issues, if a spouse or minor children of a foreigner who has been granted the refugee status in Poland are not within the Polish territory, they should be assisted in their entry to Poland in order to unite the family.

As it results from this provision, the parents of a person granted the refugee status may not be regarded as subjects of the family reunification in Poland.

Therefore, the family reunification with regard to separated children is subject to a legislative gap. The proposal to include it in the Aliens' Act have been rejected by the government. The UNHCR, together with some deputies, have submit the proposal to include the provisions referring to this issue into the draft of the new Aliens' Act, but it was also rejected.

b) To what extent does this conform to the Statement? Please outline in brief?

This provision seems not to be consistent with the Statement.

c) Are any changes needed?

Relevant legal provisions should be amended in a manner adjusting it to the SGP.

Integration

a) Please describe relevant law, policy and practice in your country?

Until recently, the integration has not been in any way provided for in the Polish law. Only on 1 December 2000, the Minister of Labour and Welfare issued a Regulation of on the Detailed Rules of Granting Assistance to the Refugees, Amount of the Financial Benefits, Forms and Scope of Assistance, Procedure in These Cases and Conditions of Suspension or Refusal of the Assistance, which is also called the Integration Ordinance.

It sets forth a single provision referring to separated minors, pursuant to which the head of the district family assistance centre shall be obliged to notify the Family Court on the separated minor granted the refugee status (Par. 5 of the Ordinance). Then, it is the court that shall take all the necessary measures to assure the welfare of the child. Unfortunately, it seems, as it has been already mentioned, that the unique decision taken by the Family Court shall be to put the separated child in an educational and care institution, which is the most frequently the orphanage. The court should, besides, appoint a guardian to the child, responsible for taking care of the child in his best interest.

The system of foster families does not work efficiently in Poland. 60% of foster families established for Polish children are assured by their relatives. No cases of separated minors placed in foster families have been reported. Foster families do not seem to be a solution with regard to separated minors in Poland.

An separated minor shall have the same access to the same benefits referring to the education, welfare and health as before the decision on their status has been taken. They will be assured by the relevant services – either in the educational children care centre or in the children emergency care unites.

b) To what extent does this conform to the Statement? Please outline in brief?

The possibilities to assure the suitable education and welfare for the child in the educational children care centre or in the children emergency care unites (orphanage) are rather small. No second language teaching is given to the child. Siblings, as it results from the example of Polish children, may be separated.

Generally speaking, the Polish law does not provide for any bi-cultural principles referring to the minors placed in educational centres. And even though the Convention on the Rights of the Child should be useful in this matter, the practical and financial problems shall constitute obstacles to assuring the suitable cultural and religious education.

c) Are any changes needed?

Special ordinance on separated minors recognised as refugee (already foreseen) should be adopted as soon as possible in order to ameliorate the overall situation and the integration of these children.

Adoption

a) Please describe relevant law, policy and practice in your country?

As it is stated in the Statement, the adoption is a rare option for the separated minors. Pursuant to the Polish Family and Guardianship Code, the adoption may take place only if the parents of the child are dead or totally deprived of their parental rights by the Family Court. It is rather a seldom situation for separated minors. The adoption may also take place if the parents are unknown or the contact with them is difficult (Art. 119 par. 1 of the Family and Guardianship Code).

In any case, it should be however noted that the adoption procedures in Poland are rather complex and difficult to conduct, and, therefore, since even the adoption of a Polish child is difficult to carry out, it does not seem to be realistic for separated minors.

b) To what extent does this conform to the Statement? Please outline in brief?

The Polish law and practice seem to correspond with the Statement in this matter.

c) Are any changes needed?

No remarks on this point.

Identity and Nationality

a) Please describe relevant law, policy and practice in your country?

Pursuant to Article 5 of the recently amended Act on the Polish Citizenship³⁰, a child born or found in Poland gains the Polish citizenship if both parents are unknown or if their citizenship is undefined or they do not have any citizenship. It seems that the first possibility may apply to the separated children.

³⁰ Act of 15 February 1962, unified text published in Dziennik Ustaw, 2000, No 28, item 353.

The foreigner may be granted the Polish citizenship, if he legally lives within the Polish territory for at least 5 years (Art. 8 par. 1 of the cited Act). In particularly justified cases, the foreigner may be granted the Polish citizenship even if he does not fulfil the conditions set forth in Par. 1 (Art. 8 par. 2 of the cited Act). The guardian of a child should give his consent to allow the child to gain the Polish citizenship.

b) To what extent does this conform to the Statement? Please outline in brief?

The Polish law seems to correspond with the Statement in this matter. However, no cases of separated child that gained the Polish citizenship have been reported – the condition of legality of sojourn within the Polish territory may be difficult to fulfil for separated children.

c) Are any changes needed?

Separated children should be treated in a more favourable manner than adults.

Family Reunification and Returns to a Country of Origin

Return

Conditions that must be fulfilled prior to return

Programmes and Aid to Facilitate Reintegration

a) Please describe relevant law, policy and practice in your country?

Returns may be carried out on voluntary on involuntary basis.

Involuntary return consists basically in deportation. As it has been already mentioned, unfortunately, some separated minors are subject to the deportation procedure and to the deportation itself (see more in point 1 and 3). They are either treated as accompanied children and referred to a group of adults, or treated as adults and deported without any further problems.

If a child is recognised as separated, he cannot be subject to the deportation procedure, if the parents or legal representatives in his country of origin have not been notified thereof and the authorities have made sure that the child shall not be on his own after the return. Besides, during the deportation itself, the child should be accompanied by a guardian, specially appointed by the Family Court.

Two different situations may arise in this matter. Firstly, if the parents or legal representatives may not be found, the child cannot be deported and – for this reason – shall be placed in the educational children care centre or in the emergency care units. Secondly, it should be noted that these procedures of verification of the situation in the country of origin are rather difficult, expensive and troublesome to perform. And even if they succeed, the costs of travel of the child and his representative to the child's country of origin are usually quite high. Therefore, it is very often much easier to abandon the deportation procedure and to place the child concerned in the educational children care centre or in the emergency care units.

One way or another, the child shall be put in the educational centre and shall wait until he gains the maturity. Then, the undeportable child, who has become an adult, may be subject to the deportation on the general basis, much easier (and cheaper) to fulfil.

Nevertheless, we have been informed that currently separated children placed in the Emergency Care Unit are being deported from Poland.

The return may be also voluntary. However, no cases of voluntary returns have been reported. Nevertheless, we should emphasise that the separated children often choose to leave (i.e. to escape) the educational children care centres or in the emergency care units that they have been placed in. It is unrealistic to suppose that they return to their countries of origin, especially because most of them have been allowed to enter Poland on the grounds of the readmission agreement between Poland and Germany. Still, they disappear from the views of the authorities (also from the statistics) and the problem that they have created vanishes.

Bearing the above remarks in mind, it seems clear that no conditions that must be fulfilled prior to return or programmes and aid to facilitate the reintegration are provided for in the Polish law.

It should be added that pursuant to the new draft of the Aliens' Act, the returns of the separated children should not be possible if it would harm the best interest of the child.

As to the family reunification, see in point C.12.1.

b) To what extent does this conform to the Statement? Please outline in brief?

The practice described above does not, in any way, correspond to the principles referring to the return set forth in the Statement of Good Practice.

Referring to point 12.2.2a) of the Statement, it may be noted that the child does not have any carer who may decide that the return is in the child's best interest. No assessment of the situation (including the family situation) in the country of origin is made. Rarely any contacts with the parents, relatives, NGOs in the country of origin are taken. No monitoring system of the child's situation after the return to the country of origin is set.

c) Are any changes needed?

Specific provisions and mechanisms referring to the return of separated minors should be set forth. The children should be encouraged to return to their countries of origin if this is in the children's best interest. The co-operation between government and NGOs (both from the 'host' country and the country of origin) with regard to this question should be established. The authorities should never consider the issue of the separated children as a problem and accept the escapes with relief.

DATA COLLECTION

Who should be responsible for collecting data on separated children? Please consider both government departments and NGOs.

What sort of data is required? From government? From NGOs?

Please provide any current (1997-1999) data on separated children, which is available (from both government and NGOs). We appreciate that at this time most of this data will relate to asylum applications by separated children.

Firstly, we would like to emphasise that the data on separated children is already collected and processed by different state government authorities, namely by all the authorities that deal with these children: the Border Guards, Police, Refugee Department of the Ministry of Internal Affairs and Administration (Office for Repatriation and Aliens), the Ministry of Labour and Social Welfare, as well as by the local self-government authorities (e.g. district family assistance centres) and by the UNHCR. Nevertheless, the data that is in the possession of the government authorities does not seem to be complete and is not easily accessible to the NGOs dealing with this issue.

The most important rule that should be put forward with regard to the issue of the data collection, is the mutual co-operation between the government and territorial self-government authorities on the one hand and the NGOs on the other. The problem of separated minors shall not be resolved without the assistance provided by the relevant organisations working with the children. Similar procedures of co-operation are already being established with regard to the adult refugees.

The government authorities shall – certainly – have more information on the separated children at the beginning of their stay in Poland and they should share it with competent NGOs. No special responsibility should be given to any of the two main actors in this field.

However, the creation of a unified register of data on separated children amongst the government authorities should be considered. We consider that it could make the situation of the children and, especially, of the NGOs dealing with separated children easier.

The data collected on the separated children should refer to:

- basic personal data such as the first and last name, gender, date and place of birth, ethnic origin, place of residence,
- family situation – names of the parents and possibly relatives, their place of residence,
- cultural background – languages (including mother tongue), religion, education,
- way of entry to Poland, date and conditions of entry, way followed.

The principles referring to the protection of personal data should apply to the data collected on the separated children and to the transfer of this data between different institutions. The confidentiality should be assured at all stages of the proceedings. The

data referring to special issues (e.g. sexual abuses, traumas, etc.) should not be revealed without special need, and without the consent of the child' legal representative or the child himself, if is able to express and understand his opinion in this matter.

As to the statistics, please refer to the Appendix.

POLITICAL LEVEL – SUPPORT FOR CHANGE

Please where possible provide the following information:

- Describe the level of contact of NGOs working with separated children have with: central government departments, local and regional governments,
- Describe any contacts with European institutions e.g.: members of the European Parliament, European Commission of the Council of Europe (NB: please give the names where possible),
- Can you identify, at the different political levels, any sources of support for improving the situation of separated children,
- Can you identify, at the different political levels, the main obstacles to change?

It should be noted that the contact the NGOs working with separated children have with central government departments takes place on the case-to-case basis. We do not have established any co-operation on the on-going basis. The problem of separated children seems to be rather neglected.

The problem is seen only by persons concerned with the rights and destiny of children in general, persons who have been known as pro-children lobby activists. They are the main support, especially for the UNHCR, in their efforts to ameliorate the separated children situation.

Since the application of international instruments may be troublesome, the authorities prefer sometimes not to see a problem, to forget it or to ignore it. For this reason, the escapes of separated children seem to be welcome with relief, as a simple solution to a difficult issue.

The main source of support are, in our opinion, people working with children. They are already sensitive to the children's problems and therefore it may be easier to acquaint them with the specific problems of separated children. Many of them are also active in the politics, some of them are present in the Parliament.

APPENDIX

TABLE 1

**STATISTICS CONCERNING ALIENS UNDER 18 WHO INDEPENDENTLY
APPLIED FOR REFUGEE STATUS**

*(According to Department for Migration and Refugee Affairs in the Ministry of Interior
Affairs and Administration)*

Nationality	1992	1993	1994	1995	1996	1997	1998	1999	2000
Afghanistan				12	78	43	30	42	15
Albania					2	1	1		1
Algeria							1		
Armenia	4	3	10	2	22	17	29	5	3
Azerbaijan		2			96	1		1	
Bangladesh						72	34	4	3
Bhutan					1				
Belarus				1			1	1	
Bosnia and Herzegovina	5	29	3						
Bulgaria						3		1	1
Burundi					1	1			
Croatia	1		1						
Ethiopia					3	1		3	
FYROM								1	
Gambia				2					
Ghana								1	
Georgia				1					1
Guinea						1			
India				4	18	27	10	2	
Iraq				1	9	14	6	1	1
Iran	2			1	2				
Yugoslavia	3	7	4		2				

Congo						1			
Lebanon	1				5		2		
Liberia						7	1		
Lithuania								1	
Latvia								1	
Moldova								1	1
Mongolia								4	
Nepal					2				
Nigeria							2		
Pakistan				1	64	118	27	7	1
Russia	1			3	2	2		4	22
Romania				1	2			5	12
Rwanda									2
Sierra Leone						1	2		
Somalia				6	7	4	3		2
Sri Lanka				4	82	146	100	7	
Sudan						2			
Syria		1				1		1	
Tajikistan	1						1		1
Togo							1	1	
Turkey	2				1			1	
Ukraine	1		2						
USA							1		
Zaire							1		
Stateless persons						2	1		1
Stateless persons – Palestinians	1			1					
Unknown citizenship					2	2			
Total numbers	23	42	20	40	409	461	297	101	69

TABLE 2**ACTIONS CONDUCTED BY THE BORDER GUARDS WITH REGARD TO
MINOR ALIENS READMITTED TO POLAND:***(According to the Border Guard)***In 2000:**

Nationality	Returned from Germany	Returned from Czech Republic	Released after return	Registered application for refugee status	Court's decision on referral to the Emergency Care Unit	Referral to the Police Children Custody	Deportations (accompanied by a legal guardian)
Afganistan	11	-	8	-	3	-	-
Azarbaijan	2	-	-	-	2	-	-
Marocco	1	-	-	-	1	-	-
Moldova	5	-	1	-	4	-	-
Russia	2	-	1	-	-	-	-
Ukraine	2	-	-	1	2	-	-
Vietnam	21	-	3	-	18	-	-
TOTAL	44	-	13	1	30	-	-

In 1999:

Nationality	Returned from Germany	Returned from Czech Reoublic	Released after return	Registered application for refugee status	Court's decision on referral to the Emergency Care Unit	Referral to the Police Children Custody	Deportations (accompanied by a legal guardian)
Afganistan	25	-	-	-	20	-	-
Russia	1	-	-	-	1	-	-
Yougoslavia	1	-	-	-	1	-	-
Moldova	5	-	-	-	4	1	-
Sri Lanka	4	-	-	-	3	1	-
Vietnam	3	-	-	1	2	1	-
China	1	-	-	-	-	1	-
TOTAL	40	-	-	1	19	9	-

Remark: All enumerated minors escaped from the place of their stay.